

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA

HAMMOND DIVISION

MAUREEN TOTH

)

)

Plaintiff,

)

)

v.

)

CAUSE NUMBER: 2:21-cv-209

)

UNITED STATES MARSHALS

)

SERVICE,

)

And

)

PHILLIP LEIBAS JR.

)

)

Defendants.

)

COMPLAINT FOR DAMAGES

Plaintiff, Maureen Toth, and by counsel, for Plaintiff's Complaint against the Defendant United States and Phillip Leibas, Jr., states as follows:

INTRODUCTION

1. This is an action against the Defendant United States Marshals Service, under the Federal Tort Claims Act, 28 U.S.C. §2671, *et seq.* and 28 U.S.C. §1346(b)(1) and Defendant Phillip Leibas, Jr., both in his individual capacity and as an agent of the United

States Marshals Service for negligence in the operation of a vehicle which caused a traffic collision in Lake County, Indiana on July 9, 2019.

2. The claims herein are brought against the Defendant United States Marshals Service pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, *et seq.* and 28 U.S.C. §1346(b)(1), for money damages as compensation for the injuries of Maureen Toth caused by the Defendant's negligence.

3. The claims herein are brought against the Defendant Phillip Leibas, Jr. in his capacity as an agent of the United States Marshals Service pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, *et seq.* and 28 U.S.C. §1346(b)(1), and in his capacity as an individual for negligent operation of a motor vehicle, for money damages as compensation for the injuries of Maureen Toth caused by the Defendant's negligence.

4. Plaintiff, Maureen Toth, has fully complied with the provisions of 28 U.S.C. §2675 of the Federal Tort Claims Act. The Plaintiff's Standard Form 95 is attached hereto as Exhibit A.

5. This suit has been timely filed in that the Plaintiff timely served notice of her claim on the United States Marshals Service less than two years after the incident forming the basis of this suit. In fact, suit is now being filed less than two years after the incident forming the basis of the action.

6. The Plaintiff is now filing this Complaint pursuant to 28 U.S.C. §2401(b) after having received no acceptance or denial of a claim after six (6) months of a completed FTCA demand, which is deemed, by 28 U.S.C. §2675(a), as effective notice of a denial of an administrative claim. As such, this filing is timely. The Administrative Tort Claim letter acknowledging receipt of demand on December 16, 2020 is attached hereto as Exhibit B.

PARTIES, JURISDICTION AND
VENUE

7. The Plaintiff, Maureen Toth, was at all times relevant hereto, a resident of Lake County, Indiana.

8. Defendant United States Marshals Service, operates throughout the United States, and the branch which employs Co-Defendant Phillip Leibas, Jr. is located at 700 North Sacramento Blvd. Suite 340, Cook County, Chicago, Illinois.

9. Defendant United States Marshals Service, including its directors, officers, operators, administrators, employees, agents, and staff at the US Marshals Service in Chicago, Illinois, are hereinafter collectively referred to as the "USMS."

10. Defendant Phillip Leibas Jr. was at all times relevant hereto, a resident of Cook County, Illinois.

11. At all times relevant to this Complaint, the directors, officers, operators, administrators, employees, agents, and staff, including, but not limited to Phillip Leibas, Jr., were employed by and/ or acting on the behalf of the Defendant USMS. Furthermore, the Defendant is responsible and vicariously liable for the negligent acts of their employees and agents under the theory of respondeat superior.

12. For the purposes of jurisdiction against Phillip Leibas Jr. as an individual, pursuant to 28 U.S.C. §1332(a), the amount in controversy in this matter exceeds \$75,000.00, and the Plaintiff Maureen Toth, and Defendant Phillip Leibas Jr., are citizens of different States, thus diversity jurisdiction is proper.

13. For the purposes of jurisdiction against the United States, and Phillip Leibas Jr.

as its agent, jurisdiction is proper under 28 U.S.C. §1346(b)(1).

14. Venue is proper under 28 U.S.C. §1402(b) in that Plaintiff resided in Lake County, in the Northern District of Indiana.

FACTUAL ALLEGATIONS

15. On or about July 9, 2019, at approximately 8:00 a.m., Plaintiff Maureen Toth was stopped facing northbound at a red light at the intersection of US 41 and Marina Drive in Hammond, Lake County, Indiana.

16. At the same time and date, Phillip Leibas Jr. was driving a vehicle northbound on US 41 approaching the same intersection.

17. At that same time, date, and place, Phillip Leibas Jr. was distracted while operating this vehicle, and as a result of his negligent operation of that vehicle, caused his vehicle to violently strike the rear of Maureen Toth's vehicle, causing substantial damage to her vehicle, and serious physical injury to Maureen Toth.

18. Upon information and belief, Phillip Leibas Jr. was acting in the scope of his employment with the US Marshals Service at the time of the collision.

19. The Plaintiff, Maureen Toth suffered losses as a result of Phillip Leibas Jr., both individually, and as an agent of the United States Marshals Service, as the result of Phillip Leibas Jr.'s negligence as set forth below.

CAUSES OF ACTION

COUNT I -

NEGLIGENCE

20. The Plaintiff realleges and incorporates each and every allegation above as if fully

set forth herein.

21. The Defendant Phillip Leibas Jr., both in his individual capacity and as an agent of the USMS, had a duty to all other drivers and passengers upon the roadway to use reasonable care in the inspection, maintenance, repair, and operation of the vehicle he was operating.

22. That on July 9, 2019, the Defendant Phillip Leibas Jr., both in his individual capacity and as an agent of the USMS while acting in scope of his employment, breached the foregoing duties and was negligent.

23. That on July 9, 2019, the Defendant Phillip Leibas Jr., both in his individual capacity and as an agent of the USMS while acting in the scope of his employment, engaged in negligent conduct, including, but not limited to:

- a. Failure to keep a proper lookout;
- b. Failure to maintain control of his vehicle;
- c. Failure to maintain a safe speed for the conditions;
- d. Failure to maintain a safe distance between vehicles in light of the conditions;
- e. Failure to make safe and proper lane changes;
- f. Failure to avoid the use of distracting devices while operating a motor vehicle; and/or
- g. Driving in such a manner as to cause a collision.

24. The Defendant Phillip Leibas Jr., both in his individual capacity and as an agent of the USMS while acting in the scope of his employment, has breached their duty of care to Maureen Toth by failing to exercise reasonable care thereby committing negligence.

25. Under 28 U.S.C. 1346(b)(1) and the common law doctrine of respondeat superior, Defendant USMS is liable for the negligent conduct of an agent acting in the scope of his or her employment.

26. The negligence of the Defendants was the proximate cause in producing injury, damages and losses to Plaintiff Maureen Toth, including but not limited to:

- a. Substantial physical injuries;
- b. Emotional distress and psychological duress;
- c. Lost earnings;
- d. Property damage, resulting in the “totaling” of the Plaintiff’s vehicle;
- e. All other damages.

27. The acts and/or omissions set forth above would constitute a claim under the law of the State of Indiana.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Maureen Toth, does hereby pray that judgment be entered in Plaintiff’s favor and against the Defendants jointly and severally as follows:

- 1) Damages resulting from the negligence of the Defendants, both individually and vicariously by law;
 - a. Substantial physical injuries;
 - b. Emotional distress and psychological duress;
 - c. Lost earnings;
 - d. Property damage, resulting in the “totaling” of the Plaintiff’s vehicle;
 - e. All other damages.

Totaling \$190,803.37.

2) Costs incurred in this civil action, together with such further and additional relief at law or in equity that this Court may deem proper.

Respectfully Submitted,

s/JOSHUA S. MALHER
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Crown Point, Indiana 46307
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Attorney for Plaintiff

JURY DEMAND

The Plaintiff in this action hereby demand trial by jury, as permitted by rule 38 of Federal Rules of Civil Procedure.

s/JOSHUA S. MALHER
Joshua S. Malher, #29008-64